

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

UNITED STATES POSTAL SERVICE

and

CASE 9-CA-42161

BRADLEY TURNER, an Individual

*Mark Mehas, Esq.*, for the General Counsel.  
*Arthur S. Kramer, Esq.*, of Philadelphia, PA,  
for the Respondent.

BENCH DECISION AND CERTIFICATION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge: I heard this case on March 16, 2006 in Columbus, Ohio. After the parties rested, I heard oral argument, and on March 20, 2006, issued a bench decision pursuant to Section 102.35(a)(1) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.<sup>1</sup> The Conclusions of Law and Order are set forth below.

CONCLUSIONS OF LAW

1. The Respondent, United States Postal Service, is subject to the jurisdiction of the National Labor Relations Board pursuant to Section 1209 the Postal Reorganization Act, 39 U.S.C. Section 1209.

2. The Charging Party, National Association of Letter Carriers, Branch 78, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate the Act as alleged in the Complaint.

<sup>1</sup> The bench decision appears in uncorrected form at pages 3 through 11 of the transcript. The corrected version now appears in volume 2, page 198 through 208 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended<sup>2</sup>

**ORDER**

The Complaint is dismissed.

Dated Washington, D.C.

---

**Keltner W. Locke**  
**Administrative Law Judge**

---

<sup>2</sup> If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

**Appendix A****BENCH DECISION**

5 This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. I conclude that Respondent did not violate Section 8(a)(1), and recommend that the Complaint be dismissed.

**Procedural History**

10 This case began on July 8, 2005, when the Charging Party, Bradley Turner, filed an unfair labor practice charge against the Respondent, the United States Postal Service. After an investigation, the Regional Director for Region 9 of the National Labor Relations Board issued a Complaint and Notice of Hearing on January 25, 2006, which I will refer to as the "Complaint." In issuing the Complaint, the Regional Director acted for the Board's General Counsel, whose representative will be referred to as the "General Counsel" or the "government."

20 On March 16, 2006, a hearing opened before me in Columbus, Ohio. On that date, the parties presented evidence and oral argument. Today, after affording the parties further opportunity to present argument, I am issuing this bench decision.

**Uncontested Allegations**

25 Based upon admissions in Respondent's Answer to the Complaint, I find that the Charging Party timely filed and served the unfair labor practice charge, that Respondent is subject to the Board's jurisdiction by virtue of the Postal Reorganization Act, 39 U.S.C. Section 101 et seq., and that Respondent operates a facility at 617 McKorckle Boulevard, Westerville, Ohio, which is the only facility involved in this proceeding.

30 Additionally, Respondent has admitted, and I find, that at all material times, the Union, National Association of Letter Carriers, Branch 78, has been a labor organization within the meaning of Section 2(5) of the Act. The Complaint does not specifically allege that Charging Party is an employee in the bargaining unit represented by the Union, or, more precisely, by the International Union of which Letter Carriers Branch 78 is a local affiliate. However, the parties have not contested the Union's status as exclusive representative of a bargaining unit which includes the Charging Party. Based on the record, I find that the Charging Party is a member of the bargaining unit represented by the National Association of Letter Carriers.

40 Further, based on Respondent's admissions, I find that at all material times, Kenneth Hodge has been Respondent's supervisor within the meaning of Section 2(11) of the Act and its agent within the meaning of Section 2(13) of the Act, and that about June 20, 2005, Respondent, by Hodge, commenced a preliminary disciplinary investigation interview of its employee Bradley Turner.

## Appendix A

### Contested Allegations

5 Respondent's Answer denies that Charging Party Turner had reasonable cause to believe that the June 20, 2005 interview would result in disciplinary action being taken against him. However, Respondent's use of the term "preBdisciplinary interview" (or PDI) itself would give an employee reason to believe that discipline could result from it. Moreover, in this instance, discipline did, in  
10 fact, result. I conclude that Turner had reasonable cause to believe that discipline would result from this meeting.

15 My findings concerning the June 20, 2005 interview depend on which witness I credit, because Turner and Hodge present quite different versions. Based upon my observations of the witnesses, I conclude that Hodge's testimony is most reliable. Where it conflicts with that of other witnesses, I credit Hodge.

20 Additionally, my observations lead me to doubt the accuracy of the testimony offered by Turner. Moreover, on crossBexamination, Turner gave unresponsive answers to a number of questions. I do not have great confidence in Turner's testimony, and credit it only when uncontradicted by other witnesses.

25 Crediting Hodge, I find that Hodge conducted the predisciplinary interview on June 20, 2005 on behalf of another supervisor, who was not then present. I find that at the beginning of this meeting, Turner requested that a Union steward be present. However, there was no steward at this particular facility. The former steward had resigned that position earlier in the year and a replacement had not been selected.

30 Hodge told Turner that there was no steward present. Contrary to Turner's testimony, I find that Hodge offered to reschedule the predisciplinary interview so that a steward from another location could attend. Instead, Turner requested that a witness attend the meeting. Hodge allowed Turner to choose the witness, and Turner chose a fellow employee, James Peters. Turner selected Peters because, in the past, Peters had been a Union steward, but Peters did not hold Union office at the time of the June 20 meeting.  
35

After the meeting began, Hodge asked Turner a question about an exchange which occurred between Turner and a supervisor. Peters asked Hodge about the date of this exchange. Hodge told Peters that he could not ask questions or make statements, but was present only as a witness. Peters remained silent through the remainder of the interview. Nonetheless, Turner participated in it  
40 without asking for a postponement so that a steward could be present. Thereafter, Respondent disciplined Turner for conduct discussed during the interview.

45 If Peters had been a Union representative, Hodge clearly would have violated Section 8(a)(1) of the Act by instructing him to remain silent. However, Respondent argues that when Turner decided to go ahead with the interview, rather than accepting hodge's offer to postpone it so

Appendix A

that a Union steward could attend, it no longer fell within the principles of *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

In other words, Turner's decision to proceed with the meeting effectively waived his *Weingarten* right. Therefore, Respondent contends, it allowed Peters to participate as a courtesy but that his presence was not required by law.

I agree with Respondent's argument. Clearly, the presence of an employee who was not a Union representative would not satisfy *Weingarten*. See *Williams Pipeline Co.*, 315 NLRB 1 (1994). However, I find that Turner decided not to insist upon a Union representative, which removed the interview from the *Weingarten* framework. Since the interview was not a *Weingarten* interview, Hodge's instruction that Peters remain silent did not violate Section 8(a)(1) of the Act. Therefore, I recommend that the Board dismiss the Complaint in this matter.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, and Order. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

Throughout this proceeding, counsel demonstrated great professionalism and civility, which is truly appreciated. The hearing is closed.